

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
DENNIS L STREETER,) CASE NO. 05-66419 JPK
) Chapter 7
Debtor.)

ORDER DENYING UNITED STATES TRUSTEE'S AMENDED
MOTION TO EXTEND TIME PURSUANT TO FED. R. BANKR. P.
9006(b)(1), OR IN THE ALTERNATIVE, FOR RELIEF FROM
THE FIFTH AMENDED ORDER AUTHORIZING ELECTRONIC
CASE FILING, ENTERED SEPTEMBER 22, 2005 ("AMENDED MOTION")

The Amended Motion was filed by Nancy Gargula, United States Trustee ("United States Trustee") on March 24, 2010. By order entered on April 29, 2010 (record entry #400) the court directed the manner in which determination of the Amended Motion would be made. As stated in that order, the Joint Stipulation of Facts filed on February 1, 2010 as record entry #18 in adversary proceeding number 09-2071 constitutes the complete stipulated record of facts with respect to the Amended Motion. Legal memoranda were filed by the parties in accordance with the April 29, 2010 order. The Amended Motion is now before the court for determination.

Jurisdiction of the court to enter a final judgment concerning the Amended Motion has been conceded by the parties, and no recitation of the jurisdictional basis of the court to do so will be stated.

The Amended Motion seeks relief in the alternative. First, the Amended Motion seeks an extension of time pursuant to Fed.R.Bankr.P. 9006(b)(1) for the United States Trustee to file a complaint pursuant to Fed.R.Bankr.P. 4004(b) to deny the debtor's discharge pursuant to 11 U.S.C. § 727(a). Alternatively, the Amended Motion seeks relief from the provisions of Paragraph 8 of the Fifth Amended Order Authorizing Electronic Case Filing of the United States Bankruptcy Court for the Northern District of Indiana, with respect to the definition stated in that

order of the time at which an electronically filed document is deemed to be filed with the court.

Many of the arguments advanced by the United States Trustee in support of the Amended Motion were advanced by the United States Trustee in response to a motion to dismiss the United States Trustee's complaint filed by the debtor Dennis L. Streeter in adversary proceeding number 09-2071. Those arguments were fully addressed by the memorandum of decision entered by the court which sustained Streeter's motion to dismiss in that adversary proceeding. Attached to this order is the court's memorandum of decision in that regard, and the court's response to the United States Trustee's arguments with respect to the Amended Motion in that memorandum of decision are incorporated herein as the determination of the United States Trustee's arguments with respect to the Amended Motion.

In the Amended Motion, the United States Trustee first argues that an extension of time should be granted pursuant to Fed.R.Bankr.P. 9006(b)(1) with respect to the filing of a complaint seeking to deny Streeter's discharge pursuant to 11 U.S.C. § 727(a). Fed.R.Bankr.P. 9006(b)(1) states:

(b) Enlargement

(1) In general

Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

In establishing limitations of the application of Rule 9006(b)(1), Fed.R.Bankr.P. 9006(b)(3) states in pertinent part as follows:

The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 4008(a),

8002, and 9033, only to the extent and under the conditions stated in those rules.

Fed.R.Bankr.P. 4004(a) and (b) state:

(a) Time for filing complaint objecting to discharge; notice of time fixed

In a chapter 7 liquidation case a complaint objecting to the debtor's discharge under § 727(a) of the Code shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). In a chapter 11 reorganization case, the complaint shall be filed no later than the first date set for the hearing on confirmation. At least 28 days' notice of the time so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k) and to the trustee and the trustee's attorney.

(b) Extension of time

On motion of any party in interest, after hearing on notice, the court may for cause extend the time to file a complaint objecting to discharge. The motion shall be filed before the time has expired.

As established by attached memorandum of decision in adversary proceeding number 09-2071, the United States Trustee failed to timely file the complaint which initiated that action. The last complaint filing deadline with respect to that action was established by the court's order entered on October 27, 2008, which granted an extension of time to March 2, 2009. The Amended Motion was filed on March 24, 2010, more than one year beyond the deadline for filing that motion established by Fed.R.Bankr.P. 4004(b). Therefore, the Amended Motion is untimely, and must be denied under Rule 4004(b).

Alternatively, the United States Trustee seems to assert that the deadline for filing a motion for extension of time under Rule 4004(b) should somehow be extended by the application of the doctrine of "excusable neglect" based upon the circumstances of this case. Fed.R.Bankr.P. 9006(b)(3) limits the court's ability to enlarge the time for taking action pursuant to Fed.R.Bankr.P. 4004(a) to "only to the extent and under the conditions stated in those rules".

On page 13 of the Amended Motion, the United States Trustee acknowledges the following:

Federal Rule of Bankruptcy Procedure 9006(b), while generally allowing an enlargement of the “time for taking action” under Rule 4004(a), reinforces the restrictions of Rule 4004(b) by stating that the extension is allowed only “to the extent and under the conditions stated” in Rule 4004.” [Kontrick, 540 U.S. at 448, citing Fed. R. Bankr. P. 9006(b)(1) and (3).] Thus, while Fed. R. Bankr. P. 9006(b)(1) generally allows an enlargement of time requested after the time has expired, so long as the request is made via motion and the failure to act was the result of excusable neglect, such relief from the Rule 4004(a) deadline, generally, is not available. [Id.] Therefore, in general, if the Rule 4004(a) deadline and any extensions under Rule 4004(b) have expired, a complainant has no recourse and will not be granted an extension of time even if the reason for failing to take action is within the definition of “excusable neglect.”

Thus, concepts of “excusable neglect” do not apply to the deadline for the filing of a motion for extension of time under Fed.R.Bankr.P. 4004(b). As explained in the attached memorandum of decision, the concept of “excusable neglect” does not fall within the equitable considerations to be considered with respect to failure to comply with the complaint filing deadline stated in *In re Kontrick*, 295 F.3d 724 (7th Cir. 2002), *rehearing en banc denied*, August 27, 2002. Thus, just as there was no room for the application of the United States Trustee’s excusable neglect argument with respect to Streeter’s motion to dismiss in adversary number 09-2071, there is no room for the application of the doctrine with respect to the Amended Motion.

Even if excusable neglect were to be considered as a ground with respect to the Amended Motion, the assertion of that ground would fail. As stated in the attached memorandum of decision in adversary proceeding number 09-2071, the Fifth Amended Order Authorizing Electronic Case Filing is entirely valid in all of its aspects, including the computation of time stated in paragraph 8 of that order. While the court wishes to emphasize that Trial Attorney Jennifer Prokop is an extremely capable attorney, she simply made a mistake in not being aware of a General Order of the United States Bankruptcy Court for the Northern District of Indiana which established a valid rule for computing the time at which a document is

electronically filed with the United States Bankruptcy Court for the Northern District of Indiana, for all purposes in which the time deadline for filing that document is pertinent. Her non-familiarity with that rule is not a ground for excusable neglect, even if the concept of “excusable neglect” were somehow applicable in the context of the Amended Motion.

Based upon the foregoing, the court determines that the Amended Motion must be denied.

IT IS ORDERED, ADJUDGED AND DECREED that the Amended Motion is denied.

Dated at Hammond, Indiana on September 10, 2010.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee